



CHEMICAL MANUFACTURERS ASSOCIATION

**WITHOUT PREJUDICE
OFFER IN SETTLEMENT**

December 28, 1995

Christian Seigneur, Ph.D.
General Manager
ENSR Consulting, Engineering and Remediation
1420 Harbor Bay Parkway
Suite 160
Alameda, CA 94502

Dear Dr. Seigneur:

Thank you for your letter of November 14. That letter, along with your previous communications by telephone, suggest to us that it may be possible to reach an amicable resolution of our dispute over the transfer from ENSR to Applied Epidemiology, Inc. ("AEI") of data from the CMA vinyl chloride epidemiology study. We thought it would be expedient to write to you to address some of the points in your letter, and to see if we could progress settlement of this matter.

First, it is unclear whether your offer to absorb the costs associated with obtaining the missing death certificates includes all of the missing death certificates, as well as the personnel time and related expenses of obtaining them. In addition to the 829 death certificates from the previous vinyl chloride study, there are up to 200 additional death certificates from the original study that also need to be replaced. Although states charge approximately \$10 for each certificate, the actual cost of replacing those certificates (which ENSR had previously represented to be in its possession and easily retrievable) is significantly larger. The additional personnel time necessary to obtain those missing death certificates is going to cost CMA \$20,474. As to related expenses, states charge a fee for doing searches for certificates for which the certificate number is unknown, which will amount to an extra \$1,500 that CMA must pay. In addition, the cost for a nosologist to code the missing death certificates is \$2.50 per certificate. Finally, there is a 10% overhead charge that CMA must pay to AEI for each of the above-listed items. Therefore, assuming that approximately 1000 death certificates need to be replaced, the total additional cost to CMA will be \$37,921.40.

Second, you take the position in your November 14 letter that ENSR is not responsible for the costs that CMA has incurred as a result of ENSR's six month delay in performing the contract because ENSR was not aware of the arrangement between CMA and AEI. My records show that not to be the case. Correspondence from Dr. Whorton indicates that ENSR was in contact with Dr. Kenneth A. Mundt at AEI at least as early as May. In light of the previous periodic conversations that I had with you, and the fact that the contract for the transfer of data provides that the data "shall be promptly delivered to CMA or its designee upon request," ENSR cannot deny that it understood CMA's immediate need for the vinyl chloride study data. The costs to CMA arising out of ENSR's failure to perform the contract for over six months are exactly the kind of costs for which ENSR agreed to indemnify CMA. These costs have already reached an amount of \$40,948, plus a 10% overhead charge, which CMA will have to pay to complete the vinyl chloride epidemiology study.

Therefore, in order to make CMA whole, ENSR would have to: (i) pay CMA \$37,921.40 to replace the lost death certificates, and (ii) indemnify CMA in an amount of \$45,042.80 to cover the additional costs to CMA resulting from ENSR's six month delay. In total, that would amount to \$82,964.20. In the spirit of coming to a prompt and amicable resolution of this dispute, however, CMA is willing to absorb half of that amount, \$41,482.10, if ENSR agrees to cover the other half. CMA believes that this is very reasonable, particularly given that these costs result from ENSR's failures and delays in performing its contract obligations to CMA.

Finally, you state in your November 14 letter that ENSR does not have responsibility for the lack of organization of the files that it transferred to AEI. Apart from the fact that ENSR acquired Environmental Health Associates, Inc. ("EHA") and therefore is liable for the way EHA organized those files, ENSR represented that the \$20,000 contract price included the service of inventorying those files. Specifically, the scope of work to which you refer in your November 14 letter states: "In his February 1994 letter to Dr. Shah, Dr. Whorton estimated the costs for this transfer to be \$19,300. Therefore, our initial cost estimate is \$20,000." Dr. Whorton's February 1994 letter specifically identified \$8,000 of the \$19,300 estimate as the cost to ENSR to "[i]nventory boxes, prepare for shipping, [and] copy certain records." As you admit in your letter, ENSR transferred the files from its storage facility in the way they were stored, and did not provide the

Christian S. Ignor, Ph.D.
December 28, 1995
Page 3

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inventorying services it contracted to provide. Therefore, CMA should not have to pay \$8,000 of the \$20,000 contract amount.

Thus, CMA is willing to settle this matter and forego litigation if ENSR agrees to pay CMA \$41,482.10 and to release CMA from paying \$8,000 of the remaining amount due on the contract. In that event, CMA would not hold ENSR's performance of this contract against ENSR in the future.

We look forward to hearing from you after you have had a chance to consider this letter.

Sincerely,



Hasmukh C. Shah, Ph.D.
Manager, Vinyl Chloride Panel

CMA 115238